In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 568

UNITED STATES OF AMERICA, PETITIONER,

v.

SANDY PRAYLOU, IN HIS OWN RIGHT, AND MARION MOISE, AS GUARDIAN AD LITEM FOR SARAH LOUISE PRAYLOU, MAGGIE PRAYLOU AND EDDIE PRAYLOU; AND EDWARD WALKER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN REPLY TO THE BRIEF IN OPPOSITION

This Reply Memorandum is directed solely to what we believe is a crucial misstatement in Respondents' Brief in Opposition. At page 2 of the Brief in Opposition, respondents state: "Negligence was an issue in both the *Praylou* and *Walker* cases."

This statement has no support in the record. To the contrary, the record establishes that both cases were based and tried on the assumption that no issue of negligence was involved. This was made perfectly clear to the trial court by counsel at the outset of the *Praylou* trial. Page 2 of the transcript of proceedings at that trial, a copy of which has been filed with this Court, shows the following colloquy:

> The COURT: Is there negligence involved in it?
>
> Mr. MILLER [counsel for United States]: There is not, as I understand.
>
> The COURT: You affirmatively plead?
>
> Mr. LEE [counsel for the Praylous]: No, sir.[1]

Similarly, in the *Walker* case there is not a single word in the entire record, printed or unprinted, which can support any finding of negligence. As pointed out at pages 5-6 of our Petition, Walker's counsel relied only on the crashing of the government plane while on an official flight and made no attempt to substantiate any claim of negligence.

That no issue of negligence was involved in either case is further confirmed by the fact that proof of negligence in the operation of a plane is absolutely immaterial under the South Carolina absolute liability statute. Since both cases were tried on the theory that the absolute liability statute could be

---

[1] While this part of the transcript has not been printed, the "Stipulation as to Record" filed in this Court expressly authorizes the parties to refer to unprinted portions of the record filed in this Court (R. 28).

invoked to hold the United States liable,[2] the only proof necessary to support recovery of damages under that theory was (1) the occurrence of the crash and (2) the ownership of the plane by the United States. And the evidence in both cases shows that only these two factors were established. The district court's findings of fact similarly were limited to those two factors. (R. 4-6, 17-18.) Its findings of fact in no way indicate any negligence on the part of any government employee.[3]

CONCLUSION

For the reasons set forth above and in our Petition, it is respectfully submitted that the petition should be granted.

SIMON E. SOBELOFF,
Solicitor General.

MARCH 1954.

---

[2] See Petition, pp. 4-5, showing that counsel in both cases specifically invited the trial court's attention to the provisions of the South Carolina absolute liability statute.

[3] The meaning and effect of the district court's conclusion of law (as distinguished from its findings of fact), to the effect that the damages were caused by a "negligent, or wrongful act", is discussed at footnote 4, page 10, of our Petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 292984 1089